

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CHESTERFIELD ASSOCIATES, INC.,

Plaintiff,

- against -

UNITED STATES COAST GUARD,

Defendant.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ NOV 19 2008 ★

LONG ISLAND OFFICE

COMPLAINT

CV 08 4674

POHORELSKY, M.

BLOCK, J.

Plaintiff CHESTERFIELD ASSOCIATES, INC. ("Chesterfield"), by its attorneys
TWOMEY, LATHAM, SHEA, KELLEY, DUBIN & QUARTARARO LLP, as and for its
complaint against defendant, the UNITED STATES COAST GUARD ("US Coast Guard"),
alleges as follows:

1. This action is brought pursuant to the Freedom of Information Act, as amended, 5 USCA § 552 (hereinafter referred to as "FOIA"), to require public disclosure of all records and other documents, or parts of them, requested by Chesterfield and contained in US Coast Guard files.
2. This Court has jurisdiction of this action pursuant to FOIA, as amended, 5 USCA § 552(a)(4)(B); the Administrative Procedure Act, 5 USCA § 701 *et seq.*, and the All Writs Statute, 28 USCA § 1651.
3. Venue of this action is properly laid in this Court.
4. Plaintiff Chesterfield is a corporation duly organized and existing under and by virtue of the laws of the State of New York having a principal place of business located at 56 South Country Road, Westhampton Beach, Suffolk County, New York.
5. Defendant US Coast Guard is an administrative agency of the United States Government with its headquarters and principal offices located at 2100 Second Street, Washington, DC.

14. By letter dated April 22, 2008, the US Coast Guard, by its agent, Cathy Broussard, acknowledged receipt of Chesterfield's FOIA request for Boston Lighthouse Contract records and indicated that a written agreement to pay estimated fees associated with processing the request would be required prior to release of any documents. A copy of this letter is attached as Exhibit "B", and incorporated by reference.

15. By letter dated April 22, 2008, Chesterfield, by Mr. Allan, agreed to pay the US Coast Guard's estimated fees in connection with processing Chesterfield's FOIA request. A copy of this letter is attached as Exhibit "C" and incorporated by reference.

16. By letter dated May 14, 2008, the US Coast Guard, by Ms. Broussard, listed some documents and records available to Chesterfield and requested payment of the processing fees prior to releasing the documents. A copy of this letter is attached as Exhibit "D" and incorporated by reference.

17. On or about June 11, 2008, the US Coast Guard, by its agent, Cassandra Walbert, confirmed that neither of the agency's letters of April 22, 2008 and May 14, 2008 constituted a formal denial by the US Coast Guard of Chesterfield's FOIA request for Boston Lighthouse Contract documents. Ms. Walbert further indicated that a formal FOIA letter would be provided by the US Coast Guard in the "very near future." A copy of this correspondence is attached as Exhibit "E" and incorporated by reference.

18. On or about June 24, 2008, the US Coast Guard produced some documents in response to Chesterfield's FOIA request of January 24, 2008 for Boston Lighthouse Contract documents.

19. By letter dated June 24, 2008, the US Coast Guard, by its agent Victoria Worrell, transmitted an index of the documents being produced to Chesterfield entitled "Partial Release".

A copy of this letter and index is attached as Exhibit "F" and incorporated by reference.

20. By letter dated July 16, 2008, Chesterfield, by the undersigned counsel, requested that the US Coast Guard produce all responsive documents or issue a formal response to Chesterfield's FOIA request of January 24, 2008 for Boston Lighthouse Contract documents. A copy of this letter is attached as Exhibit "G" and incorporated by reference.

21. By letter dated July 17, 2008, the US Coast Guard, by its agent, Aaron J. Casavant, stated that approximately 1,000 pages of documents responsive to Chesterfield's FOIA request were being reviewed by the US Coast Guard and Chesterfield would be notified as soon as that process was completed. A copy of this letter is attached as Exhibit "H" and incorporated by reference.

22. By letter dated August 28, 2008, Chesterfield, by the undersigned counsel, requested that the US Coast Guard advise of the status of Chesterfield's FOIA request for Boston Lighthouse Contract documents. A copy of this letter is attached as Exhibit "I" and incorporated by reference.

23. By letter dated September 17, 2008, the US Coast Guard, by its agent Heather R. Hayslett, stated that the US Coast Guard was currently reviewing 600 pages of records and Chesterfield's FOIA request was being processed by the US Coast Guard as expeditiously as possible. A copy of this letter is attached as Exhibit "J" and incorporated by reference.

24. By letter dated October 6, 2008, Chesterfield, by the undersigned counsel, requested that the US Coast Guard advise of the status of Chesterfield's FOIA request for Boston Lighthouse Contract documents. A copy of this letter is attached as Exhibit "K" and incorporated by reference.

25. On information and belief, the US Coast Guard has failed to produce, identify, or

provide access to all documents responsive to Chesterfield's January 24, 2008 FOIA request for Boston Lighthouse Contract documents.

26. On information and belief, the US Coast Guard has failed to issue either a formal response or denial letter to Chesterfield's January 24, 2008 FOIA request for Boston Lighthouse Contract documents.

27. Based on the US Coast Guard's failure to issue a response or final determination to Chesterfield's January 24, 2008 FOIA request for Boston Lighthouse Contract documents, Chesterfield is prevented from making an administrative appeal with the US Coast Guard.

28. Chesterfield has constructively exhausted all of its administrative remedies in attempting to obtain the materials requested under FOIA. 5 USCA § 552(a)(6)(C)(i).

29. The information sought by Chesterfield is within the provisions of FOIA, 5 USCA § 552(a), and is required to be disclosed by the US Coast Guard.

30. The US Coast Guard's failure to respond, issue a final determination, and furnish the requested information is arbitrary, capricious, and irreparably injures Chesterfield by depriving it of public information to which Chesterfield is entitled access.

31. The US Coast Guard's refusal to issue a final determination or disclose the records to Chesterfield is wrongful and without lawful reason or excuse, and Chesterfield is entitled to the relief provided by FOIA.

Wherefore, for all of the foregoing reasons, Chesterfield requests that this Court:

1. Deem the information sought by Chesterfield to constitute public information within the meaning of the Freedom of Information Act, as amended, 5 USCA § 552(a), and order the US Coast Guard to make available for inspection and copying all of the information sought by Chesterfield in its January 24, 2008 request for Boston Lighthouse Contract documents;

2. Enjoin the US Coast Guard from withholding the requested information from Chesterfield pursuant to FOIA, 5 USCA § 552(a)(4)(B);
3. Expedite the proceedings in this action as provided by FOIA;
4. Award Chesterfield its costs and reasonable attorney's fees in this action, pursuant to FOIA, 5 USCA § 552(a)(4)(E);
5. Issue a written finding, pursuant to FOIA, 5 USCA § 552(a)(4)(F), that the circumstances surrounding the withholding raise questions whether US Coast Guard personnel acted arbitrarily or capriciously with respect to the withholding; and
6. Grant Chesterfield such other and further relief as the court deems just and proper.

Dated: Riverhead, New York
November 18, 2008

Respectfully submitted,

TWOMEY, LATHAM, SHEA, KELLEY, DUBIN
& QUARTARARO, LLP

By: 

Amiel S. Gross, Esq. (AG-4585)
Attorneys for Plaintiff
33 West Second Street
PO Box 9398
Riverhead, New York 11901
(631) 727-2180
(631) 727-1767 (fax)



(Via E-Mail & First Class Mail)
Ms. Cathy Broussard, Chief of Contracting Office
U. S. Coast Guard
Facilities Design and Construction Center
5505 Robinhood Road, Suite K
Norfolk, VA 23513-2400

1/24/08

Re: Contract 01-L03050 (Boston Lighthouse)

Dear Ms. Broussard:

This letter constitutes our formal request under the Freedom Of Information Act for all details involving Atlantic Mechanical's proposal and the subsequent review by all Coast Guard personnel leading up to the award of this contract.

The information provided to us should include, but not be limited to, all factors the Coast Guard employed to assess the applicability, utility, maintenance, and cost of the waterfront access chosen.

Furthermore, the presentation made by Atlantic Mechanical's design engineer and his credentials with respect to Ocean Engineering, and the credentials of the Coast Guard's Waterfront structural engineer who made the necessary assessment of the proposal to cause it to be chosen.

Your research regarding Atlantic Mechanical's financial strength, and that of their subcontractor must be revealed, as well as the relationship between Atlantic and the subcontractor, both financially and legally. Previous contracts performed by Atlantic that have a similarity to this one should be part of your submittal.

I look forward to your response.

Sincerely,

E. Davies Allan, pres.
Cc: James Riggs, Duncan Mellor



Commanding Officer
Facilities Design & Construction Center
(Atlantic)

5505 Robin Hood Rd., Suite K
Norfolk, VA 23513-2431
Staff Symbol:
Phone: (757) 852-3417
Fax: (757) 852-3495

4200
Ser. No: 0143K
April 22, 2008

Chesterfield Associates, Inc.
Attn: Mr. Allan
56 Country Road,
West Hampton Beach, NY 11978

Dear Mr. Allan:

I am responding to your Freedom of Information Act (FOIA) request of January 24, 2008. Your request sought the documents listed below:

- All details involving Atlantic Mechanical's Proposal.
- Review documents by all Coast Guard Personnel leading up to the award of the task order.
- All factors the Coast Guard employed to assess the applicability, utility, maintenance, and cost of the waterfront access chosen.
- The presentation made by Atlantic Mechanical's design engineer and his credentials with respect to Ocean Engineering.
- The credentials of the Coast Guard's structural engineer.
- Research regarding Atlantic Mechanical's financial strength.
- Relationship between Atlantic Mechanical and subcontractor, both financial and legally.

Due to the time spent reviewing the materials that you have requested the following fees will be assessed for search, review, and duplication charges. The time required to search for records responsive to your request is estimated to be [2] hours. The time required to review the records responsive to your request is estimated to be [15] hours. The number of pages responsive to your request is estimated to be [71] pages. The total charge to process your request is estimated to be \$794.56. **Please note that this is an estimate only.** The actual cost may be more or less than this estimate. However, the only releasable documents are of the site visit attendance list, and the task order award. The remaining documents are exempt from disclosure due to one of the following FOIA exemptions:

Exemption (4) Applies to information such as trade secrets and commercial or financial information obtained from a person on a privileged or a confidential basis.

Exemption (5) Applies to inter- and intra-agency communications, which are deliberative in nature and involve the decision making process.

I will hold off processing your request until I receive a written agreement from you to pay all FOIA fees assessed. If you are unwilling to pay or would like to modify your request to lower



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April 22, 2008

Via Email/Postal Mail

U.S. Department of Homeland Security
United States Coast Guard
Facilities Design & Construction Center (Atlantic)
Attn: Cathy Broussard
Chief of Contracting
5505 Robin Hood Road, Suite K
Norfolk, VA 23513-2431

Re: Boston Light Waterfront Access Pier Reconstruction
Task Order

Subject: FOIA Fee Acceptance

Dear Ms. Broussard:

We hereby acknowledge receipt of your letter dated 4/22/08 regarding our Freedom of Information Act (FOIA) request. Please be advised that Chesterfield Associates agrees to pay the computed fees charged by the Coast Guard in order to process our request. We understand that the \$794.56 listed in your above letter is only an estimated total amount.

Please process our request and inform us of the exact total amount due once the compilation is completed.

Thank you.

E. Davies Allan

E. Davies Allan
President

EDA:jd

U.S. Department of
Homeland Security

United States
Coast Guard



Commanding Officer
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4200

Ser. No: 0167K

May 14, 2008

Chesterfield Associates, Inc.
Attn: Mr. Allan
56 Country Road,
West Hampton Beach, NY 11978

Dear Mr. Allan:

Listed below are the documents available to you under your Freedom of Information Act (FOIA) request of January 24, 2008.

- Task Order Award (32 pages)
- 2005 Programmatic General Permit (15 pages)
- 2006 Programmatic General Permit (4 pages)
- 1979 Historical Preservation Analysis (17 pages)
- Wage Determination (12 pages)
- Drawings (5 pages)

Applicable costs include search time for the records in the amount of \$93.06 (2 hours). Additionally, the time required to review the records responsive to your request total \$697.95 (15 hours). Finally, the reproduction costs total \$8.50 at a cost of \$0.10 per sheet. The total charge to process your request is \$799.51. Please forward your check, draft or money order in the amount of \$799.51 made payable to the "Treasury of the United States" to our office.

If you are unwilling to pay or would like to modify your request to lower the cost, or if you have any other questions regarding this matter, please feel free to contact the Contract Specialist, Heather Brubeck at heather.s.brubeck@uscg.mil or 757-852-3417.

Sincerely,

A handwritten signature in black ink, appearing to read "Cathy Broussard".
CATHY BROUSSARD
Chief of Contracting

Mr. Shea:

This is to confirm our conversation of today. You were concerned that the Coast Guard may have issued FOIA denial letters on April 22, 2008 and/or May 14, 2008 and that these letters may have triggered appeal deadlines. I have scanned and attached the two letters. The two letters inform your client of his responsibilities regarding fees, but neither is a formal denial.

The Coast Guard has not issued a denial letter and your client's appeal rights have not yet been triggered.

The Coast Guard has compiled a significant list of responsive documents and expects to provide your client with a formal FOIA response in the very near future.

I have submitted a courtesy copy to the FDCCLANT Chief of Contracting, Ms. Cathy Broussard; the MLCA FOIA Control Officer, Mr. Joe Mason; and the FDCCLANT Contracting Specialist, Ms. Heather Brubeck. However, I will be your point of contact. Please feel free to contact me, should you have any further questions.

Cassandra Walbert
Attorney-Advisor (Contracts)
U.S. Coast Guard
Facilities Design and Construction Center Atlantic (FDCCLANT)
5505 Robin Hood Road, Suite K
Norfolk, VA 23513-2423
Bus:(757)852-3402
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Cassandra.Walbert@uscg.mil



[Chesterfieldpdf \(136 KB\)](#)

U.S. Department of
Homeland Security

United States
Coast Guard



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4700

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Partial Release

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LAUREN E. STILES
AMIEL S. GROSS

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NY, NJ, CT & FL BARS
NY & TX BARS
NY & NC BARS

July 16, 2008

VIA FACSIMILE

Cassandra Walbert
Attorney-Advisor (Contracts)
U.S. Coast Guard
Facilities Design and Construction Center Atlantic (FDCCLANT)
5505 Robin Hood Road, Suite K
Norfolk, VA 23513-2431

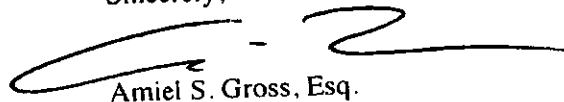
Re: Release of FOIA Documents to Chesterfield

Ms. Walbert:

As you know, we represent Chesterfield Associates in connection with its request under FOIA for the production of documents by your office relating to the Boston Lighthouse Contract. We have been repeatedly informed by various individuals with your office that documents would be forthcoming, or that a formal denial letter would be issued. To date, we have received only approximately 200 documents in response to a standing request by Chesterfield pending for over four months, and the Coast Guard has failed to issue a final ruling or denial letter to the FOIA request, which remains open.

Please either produce all responsive documents as requested by Chesterfield, or make a final ruling on Chesterfield's FOIA request no later than **Friday, July 18, 2008**. Otherwise, Chesterfield will commence a federal court action to compel production under FOIA.

Sincerely,



Amiel S. Gross, Esq.

cc: Ms. Cathy Broussard, U.S. Coast Guard
Ms. Heather Brubeck, U.S. Coast Guard
Mr. Dave Allan, Chesterfield Associates

20 MAIN STREET
EAST HAMPTON, NY 11937
631.324.1200

51 HILL STREET
SOUTHAMPTON, NY 11968
631.287.0090

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56340 MAIN ROAD, P.O. BOX 325
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U.S. Department of
Homeland Security

United States
Coast Guard



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Maintenance and Logistics Command
Atlantic

300 E. Main Street
Norfolk, VA 23510-9100
Staff Symbol: (lg)
Phone: (757) 628-4209
Fax: (757) 628-4451

032-08-08803
5720
July 17, 2008

Via E-mail and U.S. Mail

Chesterfield Associates, Inc.
ATTN: Mr. Dave Allen
123 W. Shore Road
Westport Island, Maine 04578

Dear Mr. Allen:

This letter is in response to Mr. Amiel S. Gross' electronic mail correspondence dated July 16, 2008 regarding the partial release to you of approximately 200 pages of responsive records on June 24, 2008. This correspondence was forwarded to my office for action. The paper record indicates that the partial release referenced in Mr. Gross' letter was from the United States Coast Guard Facility Design and Construction Center Atlantic (FDCCLANT) and was in response to your original Freedom of Information Act request dated January 24, 2008. However, approximately 1000 pages of additional documentation were identified as responsive and forwarded to this office for review on June 25, 2008. We are currently in the process of reviewing the additional documentation and will notify you as soon as that process is completed.

If you have any questions or need further information, please contact me at (757) 628-4192.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron J. Casavant".

AARON J. CASAVANT
Assistant FOIA Control Officer
Maintenance and Logistics Command Atlantic

Copy: Commanding Officer, Coast Guard Facility Design and Construction Center

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August 28, 2008

VIA FACSIMILE AND EMAIL

Aaron J. Casavant
Assistant FOIA Control Officer
Maintenance and Logistics Command Atlantic
United States Coast Guard
300 East Main Street
Norfolk, VA 23510-9100

Re: Matter of Chesterfield Associates, Inc., Number B-400330
Contract Number HSCGG1-06-D-3WKO76, Project Number 01 L03050

Dear Mr. Casavant:

In your letter to our client, Mr. E. Davies Allan, dated July 17, 2008, regarding Chesterfield's FOIA request, you indicated that you were in the process of reviewing documentation and you would notify us as soon as the process is completed. Please advise us immediately the status of Chesterfield's FOIA request. Thank you for your time and attention to this matter.

Sincerely,



Amiel S. Gross

ASG:js

cc: E. Davies Allan, Chesterfield Associates, Inc.

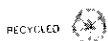
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5720
032-08-08803
September 17, 2008

Mr. Amiel S. Gross
33 West 2nd St., Box 9398
Riverhead, NY 11901
(631) 727-2180

Dear Mr. Gross:

This letter is to in response to your letter of 28 August 2008 requesting the status of the FOIA for Chesterfield Associates, Inc. The Coast Guard is currently reviewing approximately 600 pages of records received by the Facilities Design and Construction Center.

We will endeavor to complete this process as quickly as possible.

If you have any questions or need further information, please contact me at (757) 628-4192.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather R. Hayslett".

HEATHER R. HAYSLETT
YN1, U. S. Coast Guard, General Law Branch
Maintenance and Logistics Command Atlantic



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October 6, 2008

VIA FACSIMILE

Heather R. Hayslett
YN1, U.S. Coast Guard, General Law Branch
Maintenance and Logistics Command Atlantic
United States Coast Guard
300 East Main Street
Norfolk, VA 23510-9100

**Re: Matter of Chesterfield Associates, Inc.
Contract Number HSCGG1-06-D-3WKO76, Project Number 01 L03050**

Dear Ms. Hayslett:

Regarding your letter dated September 17, 2008, please advise us immediately the status of Chesterfield's FOIA request so that we can avoid litigation to compel production. As you know, this request has been outstanding for over 10 months (since January, 2008). Thank you for your time and prompt attention to this matter.

Sincerely,

Amiel S. Gross

ASG:js

cc: E. Davies Allan, Chesterfield Associates, Inc.